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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,266	07/03/2003	Michael A. Fetcenko	OBC-103.1	4865

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ENERGY CONVERSION DEVICES, INC.
2956 WATERVIEW DRIVE
ROCHESTER HILLS, MI 48309

EXAMINER

WYSZOMIERSKI, GEORGE P

ART UNIT	PAPER NUMBER
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1793

MAIL DATE	DELIVERY MODE
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11/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/613,266

Applicant(s)

FETCENKO ET AL.

Examiner

George P. Wyszomierski

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 30-34, and 36-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 30-33, 36, 38-41, 43, 44 and 46-56 is/are rejected.
- 7) ☒ Claim(s) 34, 37, 42 and 45 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Applicant has withdrawn the request to designate priority of the present application to a previously filed application. The first full paragraph on page 1 of the specification should be revised to reflect the current relationships between the various cases referred to in that paragraph.

2. Claim Objection-- Claim 56 is objected to because it appears that the word "further" should be deleted from this claim, as this word does not make sense in the context of the claim as drafted.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 30-33, 36, 38-41, 43, 44, and 46-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakamoto et al. (U.S. Patent 6,153,334).

Sakamoto discloses reacting a liquid nickel sulfate solution including ammonium (NH₃) with another reactant to form an active nickel material, i.e. nickel oxide. The prior art process may be conducted in the presence of an oxidant such as a peroxide or perchlorate; see claim 34 of Sakamoto. The prior art process further includes adding a base such as sodium hydroxide (NaOH). The prior art does not specify the amount of oxidation as recited in instant claims 30-32, 46 and 47, the oxidation state of nickel as

recited in claims 33, 55 and 56, the particular base metal compositions recited in claims 40 and 41, the "spherical" limitation of claim 43, the properties recited in claim 44, or the forming of a complex as recited in claim 54. These differences are not seen as resulting in a patentable distinction between the prior art and the claimed invention because:

a) the degree of oxidation is clearly dependent upon such factors as the composition of the initial material, the precise oxidation agent used and in what amount, and the temperature employed in the prior art processes. All of these parameters can be varied in the Sakamoto process, as evidenced by the numerous examples disclosed therein. Thus, the examiner's position is that one of ordinary skill in the art would have easily been able to vary the reaction conditions in Sakamoto to achieve a desired degree of oxidation.

b) The only known oxidation states of nickel are +2 and +3 as presently claimed; it is therefore a reasonable assumption that the prior art nickel materials would comprise nickel in the claimed oxidation state(s).

c) With respect to claims 40 and 41, example 8 of Sakamoto discusses the preparation of powders containing cobalt. Thus, to produce materials in accord with the instant claims would have been well within the level of one of ordinary skill in the art.

d) With respect to claim 43, the prior art process includes the production of spherical powders as presently claimed.

e) With respect to claim 44, the Abstract of Sakamoto discloses a tap density as presently claimed. With regard to the apparent density and particle size, it is a reasonable assumption that these factors would be the same in the Sakamoto process

and the invention, given that the reactants and reaction conditions may be the same in both instances.

f) The specific substances formed in the prior art reactions would depend upon the actual reactants used and the processing conditions present. Because these factors may be the same in the prior art and the present invention, one of skill in the art would expect the same results, in the form of complexes or otherwise from those reactions, in both the prior art and the invention.

Thus, the disclosure of Sakamoto et al. is held to create a prima facie case of obviousness of the presently claimed invention.

5. In a response filed October 12, 2007, Applicant states that the Sakamoto process is performed in a manner to prevent oxidation of the particles, as opposed to the making of "preoxidized" particles as presently claimed, and/or that certain exemplary embodiments of the invention result in oxidized particles to a specific degree not contemplated by Sakamoto. The examiner's position is that, despite the low concentration of dissolved oxygen in the prior art process, oxidized particles are specifically disclosed by Sakamoto as being produced in that process. With regard to any specific amounts of oxidation, it is first noted that the claims are being given their broadest reasonable interpretation during examination, and are thus not limited to any specific or exemplary embodiment(s) disclosed in the specification. Further, Applicant has provided no evidence of any particular difference in the degree of oxidation of particles made in the present process versus those made in the Sakamoto process.

The examiner agrees that the previously cited Bogauchi, Ovshinsky, Baba, and Tanigawa references do not disclose or suggest processes in accord with the claims as presently amended, and therefore all rejections based on those references are withdrawn.

6. Claims 34, 37, 42 and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Wyszomierski whose telephone number is (571) 272-1252. The examiner can normally be reached on Monday thru Friday from 8:00 a.m. to 4:30 p.m. Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King, can be reached on (571) 272-1244. All patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


GEORGE WYSZOMIERSKI
PRIMARY EXAMINER
GROUP 1793

GPW
November 26, 2007